

MONTANA LEGISLATIVE HISTORY

Chapter 477 1st 2001

Bill H _____ S 489

Original bill & history x c

H. Committee on JUDICIARY

Hearing Date(s) 3/13 x c

EXEC ACTION 3/28 x c

_____ c

_____ c

Date Out _____ c

S. Committee on JUDICIARY

Hearing Date(s) 2/19 _____ c

& EXEC. ACTION _____ c

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

HOUSE APPROPRIATIONS

HEARING 4/2 x

& EXEC. ACTION

Bill Draft Number: LC1673

Bill Type - Number: SB 489

Short Title: Revise 4th offense DUI sentencing to consider fiscal impacts

Primary Sponsor: Lorents Grosfield

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 66

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/28/2001			
(S) Signed by Governor	04/28/2001			
(S) Transmitted to Governor	04/19/2001			
(H) Signed by Speaker	04/17/2001			
(S) Signed by President	04/13/2001			
(S) Returned from Enrolling	04/12/2001			
(C) Sent to Printing	04/12/2001			
(S) Sent to Enrolling	04/11/2001			
(S) 3rd Reading Passed as Amended by House	04/11/2001	49	1	
(S) Scheduled for 3rd Reading	04/11/2001			
(S) 2nd Reading House Amendments Concurred on Voice Vote	04/10/2001	50	0	
(S) Scheduled for 2nd Reading	04/10/2001			
(H) Returned to Senate with Amendments	04/07/2001			
(H) 3rd Reading Concurred	04/07/2001	95	5	
(H) Scheduled for 3rd Reading	04/07/2001			
(H) 2nd Reading Concurred	04/06/2001	97	3	
(H) Scheduled for 2nd Reading	04/06/2001			
(C) Sent to Printing	04/04/2001			
(H) Committee Report--Bill Concurred as Amended	04/04/2001			(H) Appropriations
(H) Committee Executive Action--Bill Concurred as Amended	04/03/2001	17	0	(H) Appropriations
(S) Revised Fiscal Note Printed	04/02/2001			
(H) Hearing	04/02/2001			(H) Appropriations
(S) Revised Fiscal Note Signed	03/31/2001			
(S) Revised Fiscal Note Received	03/30/2001			
(C) Sent to Printing	03/28/2001			
(H) Committee Report--Bill Concurred as Amended	03/28/2001			(H) Judiciary
(H) Committee Executive Action--Bill Concurred as	03/28/2001	17	1	(H) Judiciary

Amended			
(S) Revised Fiscal Note Requested	03/28/2001		
(H) Hearing Canceled	03/27/2001		(H) Appropriations
(H) Hearing	03/13/2001		(H) Judiciary
(H) Referred to Committee	03/03/2001		(H) Judiciary
(H) First Reading	03/03/2001		
(S) Revised Fiscal Note Printed	02/28/2001		
(S) Revised Fiscal Note Signed	02/22/2001		
(S) Revised Fiscal Note Received	02/22/2001		
(S) Revised Fiscal Note Requested	02/22/2001		
(S) Transmitted to House	02/22/2001		
(S) 3rd Reading Passed	02/22/2001	47	3
(S) Scheduled for 3rd Reading	02/22/2001		
(S) 2nd Reading Passed	02/21/2001	47	3
(S) Scheduled for 2nd Reading	02/21/2001		
(S) Committee Report--Bill Passed	02/19/2001		(S) Judiciary
(S) Committee Executive Action--Bill Passed	02/19/2001	6	2 (S) Judiciary
(S) Fiscal Note Printed	02/19/2001		
(S) Hearing	02/19/2001		(S) Judiciary
(S) Fiscal Note Signed	02/19/2001		
(S) Fiscal Note Received	02/19/2001		
(C) Introduced Bill Text Available Electronically	02/16/2001		
(S) Fiscal Note Requested	02/16/2001		
(S) Referred to Committee	02/16/2001		(S) Judiciary
(S) First Reading	02/16/2001		
(S) Introduced	02/16/2001		
(C) Draft Delivered to Requester	02/16/2001		
(C) Draft Ready for Delivery	02/16/2001		
(C) Draft in Assembly/Executive Director Review	02/16/2001		
(C) Draft in Final Drafter Review	02/16/2001		
(C) Draft in Input/Proofing	02/16/2001		
(C) Bill Draft Text Available Electronically	02/15/2001		
(C) Draft to Drafter - Edit Review [CAJ]	02/15/2001		
(C) Draft in Edit	02/15/2001		
(C) Draft in Legal Review	02/15/2001		
(C) Draft to Requester for Review	02/12/2001		
(C) Draft Taken Off Hold	02/10/2001		
(C) Draft On Hold	02/01/2001		
(C) Fiscal Note Needed	01/13/2001		
(C) Draft Request Received	01/13/2001		

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name Mi
Requester	Grosfield	Lorents
Drafter	Lane	Valencia
Primary Sponsor	Grosfield	Lorents

Subjects

Description	Revenue/Approp. Vote Majority Req.	Subject Code
Alcohol and Drugs	Simple	ALC
Criminal Procedure (see also: Law Enforcement)	Simple	CRP
Crimes	Simple	CR

Additional Bill Information

Probable Fiscal Note: Yes
Preintroduction Required: N
Session Law Ch. Number: 417
DEADLINE
Category: General Bills
Transmittal Date: 02/23/2001
Return (with 2nd house amendments) Date: 03/31/2001

Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	01-JUL-01	

2001 Montana Legislature

[About Bill -- Links](#)

SENATE BILL NO. 489

INTRODUCED BY L. GROSFIELD



AN ACT REVISING THE PENALTIES FOR FOURTH OR SUBSEQUENT OFFENSE DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS AND DRIVING WITH EXCESSIVE ALCOHOL CONCENTRATION; ALLOWING AS A PENALTY FOR A FOURTH OR SUBSEQUENT OFFENSE THAT A PERSON ENTER AND COMPLETE A RESIDENTIAL ALCOHOL DEPENDENCY TREATMENT PROGRAM OPERATED OR APPROVED BY THE DEPARTMENT OF CORRECTIONS; ALLOWING THE DEPARTMENT OF CORRECTIONS TO OPERATE A RESIDENTIAL ALCOHOL TREATMENT PROGRAM AT THE FORENSIC UNIT AT WARM SPRINGS; AMENDING SECTIONS 53-1-202, 61-8-731, AND 61-8-732, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the incidence of fourth or subsequent convictions for driving under the influence of alcohol has not abated despite the threat of imprisonment; and

WHEREAS, alcoholism may be treatable with the appropriate level of intensive therapeutic programming; and

WHEREAS, a program of intensive residential alcohol treatment may reduce recidivism by persons who drive under the influence of alcohol.

THEREFORE, the Legislature finds that it is in the interests of public health and safety to establish a residential alcohol treatment program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-1-202, MCA, is amended to read:

"53-1-202. (Temporary) Department of corrections. (1) Adult and youth correctional services are included in the department of corrections to carry out the purposes of the department.

(2) Adult corrections services consist of the following correctional facilities or programs:

(a) the prisons listed in 53-30-101;

(b) appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:

(i) in prerelease centers;

(ii) under intensive supervision;

(iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(iv) in other appropriate programs; and

(c) the boot camp authorized by 53-30-403.

(3) Youth correctional services consist of the following correctional facilities or programs to provide for custody, supervision, training, education, and rehabilitation of delinquent youth and youth in need of intervention pursuant to Title 52, chapter 5:

(a) Pine Hills youth correctional facility or other state youth correctional facility; and

(b) any other facility or program that provides custody and services for delinquent youth.

(4) A state institution or facility may not be moved, discontinued, or abandoned without the consent of the legislature.

53-1-202. (Effective on occurrence of contingency) Department of corrections. (1) Adult and youth correctional services are included in the department of corrections to carry out the purposes of the department.

(2) Adult corrections services consist of the following correctional facilities or programs:

(a) the prisons listed in 53-30-101;

(b) appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:

(i) in prerelease centers;

(ii) under intensive supervision;

(iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(iv) in other appropriate programs;

(c) the boot camp authorized by 53-30-403; and

(d) a residential alcohol treatment program located at the forensic unit at Warm Springs.

(3) Youth correctional services consist of the following correctional facilities or programs to provide for custody, supervision, training, education, and rehabilitation of delinquent youth and youth in need of intervention pursuant to Title 52, chapter 5:

- (a) Pine Hills youth correctional facility or other state youth correctional facility; and
- (b) any other facility or program that provides custody and services for delinquent youth.

(4) A state institution or correctional facility may not be moved, discontinued, or abandoned without the consent of the legislature."

Section 2. Section 61-8-731, MCA, is amended to read:

"61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- penalty for fourth or subsequent offense. (1) On the fourth or subsequent conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, the person is guilty of a felony and shall be punished by:

~~(a)(a) imprisonment sentencing the person to the department of corrections for placement in an appropriate correctional facility or program for a term of not less than 6 months or more than 13 months, for which the imposition or execution of the first 6 months may not be suspended, and during which the person is not eligible for parole;~~

~~—(b) probation for a term of not less than 1 year or more than 4 years; and for a term of 13 months. The court shall order that if the person successfully completes a residential alcohol treatment program operated or approved by the department of corrections, the remainder of the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may not be deferred or suspended, and the person is not eligible for parole.~~

~~—(b) sentencing the person to either the department of corrections or the Montana state prison or Montana women's prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the term imposed under subsection (1)(a); and~~

~~(c) a fine in an amount of not less than \$1,000 or more than \$10,000.~~

~~(2) The court shall, subject to sentencing restrictions:~~

~~—(a) specify one of the following facilities as the initial place in which the term of imprisonment must be served:~~

~~—(i) a state prison;~~

~~—(ii) a regional correctional facility;~~

~~—(iii) a county jail;~~

~~—(iv) a boot camp, provided the prior approval of the department of corrections has been obtained; or~~

~~—(v) a prerelease center or, upon acceptance by the facility, a state-approved public or private treatment~~

~~facility that provides the appropriate level of chemical dependency treatment, provided the prior approval of the department of corrections has been obtained; or~~

~~(b) sentence the person to the department of corrections for placement in an appropriate correctional institution or program; and~~

~~(c) order a person who is financially able to pay the costs of imprisonment, probation, and chemical dependency treatment under this section.~~

(2) The department of corrections may place an offender sentenced under subsection (1)(a) in a residential alcohol treatment program operated or approved by the department of corrections or in a state prison.

(3) The court shall, as a condition of probation, order:

(a) that the person abide by the standard conditions of probation promulgated by the department of corrections;

(b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section;

(c) that the person may not frequent an establishment where alcoholic beverages are served;

(d) that the person may not consume alcoholic beverages;

(e) that the person may not operate a motor vehicle unless authorized by the person's probation officer;

(f) that the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;

(g) that the person submit to random or routine drug and alcohol testing; and

(h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system.

~~(3)~~(4) The sentencing judge may impose upon the defendant any other reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited to:

(a) payment of a fine as provided in 46-18-231;

(b) payment of costs as provided in 46-18-232 and 46-18-233;

(c) payment of costs of court-appointed counsel as provided in 46-8-113;

(d) community service;

(e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or

~~(f) treatment in a state-approved public or private treatment facility; or~~

~~(g)(f)~~ any combination of the restrictions or conditions listed in subsections (3)(a) through ~~(3)(f)~~ (3)(e).

~~(4) (a)~~(5) Following initial placement of a defendant in a ~~boot camp, prerelease center, or~~ treatment facility under subsection (2)~~(a)~~, the department of corrections may, at its discretion, place the offender in another facility or program.

~~(b) The department of corrections may order all or any portion of the term of probation to be served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation, apply to the probation.~~

~~(5) If a violation of the restrictions or conditions of the probation is established, the court may continue the period of probation or may require the defendant to serve the remainder of the probation sentence in one of the facilities set forth in subsection (2)(a) or (2)(b). The court may credit the remainder of the probation or the time to be served in a facility set forth in subsection (2)(a) or (2)(b) with all or part of the time already served on probation.~~

(6) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to persons sentenced under this section."

Section 3. Section 61-8-732, MCA, is amended to read:

"61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- assessment, education, and treatment required. (1) In addition to the punishments provided in 61-8-714, 61-8-722, and 61-8-731, regardless of disposition, a defendant convicted of a violation of 61-8-401 or 61-8-406 shall complete:

(a) a chemical dependency assessment;

(b) a chemical dependency education course; and

(c) on a second or subsequent conviction for a violation of 61-8-401 or 61-8-406, except a fourth or subsequent conviction for which the defendant completes a residential alcohol treatment program under 61-8-731(2), or as required by subsection (8) of this section, chemical dependency treatment.

(2) The sentencing judge may, in the judge's discretion, require the defendant to complete the chemical dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before sentencing, the judge shall order the chemical dependency assessment as part of the sentence.

(3) The chemical dependency assessment and the chemical dependency education course must be completed at a treatment program approved by the department of public health and human services and must be conducted by a certified chemical dependency counselor. The defendant may attend a treatment program of the defendant's choice as long as the treatment services are provided by a certified chemical dependency counselor. The defendant shall pay the cost of the assessment, the education course, and chemical dependency treatment.

(4) The assessment must describe the defendant's level of addiction, if any, and contain a recommendation as to education, treatment, or both. A defendant who disagrees with the initial assessment may, at the defendant's cost, obtain a second assessment provided by a certified chemical dependency counselor or a program approved by the department of public health and human services.

(5) The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based upon the determination of one of the counselors.

(6) Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a chemical dependency education course or treatment program. If the defendant fails to attend the education course or treatment program, the counselor shall notify the court of the failure.

(7) A court or counselor may not require attendance at a self-help program other than at an "open meeting", as that term is defined by the self-help program. A defendant may voluntarily participate in self-help programs.

(8) Chemical dependency treatment must be ordered for a first-time offender convicted of a violation of 61-8-401 or 61-8-406 upon a finding of chemical dependency made by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services.

(9) (a) On a second or subsequent conviction, the treatment program provided for in subsection (5) must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program.

(b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the court shall revoke the suspended sentence, if any, impose any remaining portion of the suspended sentence, and may include additional monthly monitoring for up to an additional 6 months."

Section 4. Coordination instruction. If Senate Bill No. 207 is passed and approved and if it includes a section that removes the forensic unit at Warm Springs as one of the facilities or programs of the department of corrections, then [section 1] is void.

Section 5. Effective date. [This act] is effective July 1, 2001.

Section 6. Applicability. [This act] applies to persons sentenced under 61-8-731 for offenses committed on or after [the effective date of this act].

- END -

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted. See the [status of this bill](#) for the bill's primary sponsor.

[Status of this Bill](#) | [2001 Legislature](#) | [Leg. Branch Home](#)

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Prepared by Montana Legislative Services

(406)444-3064

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 19, 2001 at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused:

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 489, SB 485, SB 488, SB 487, 2/15/2001
Executive Action: SB 417, SB 416, SB 452, SB 489, SB 17, SB 487, SB 485
SB 488

HEARING ON SB 489

Sponsor: SEN. LORENTS GROSFIELD, SD 13, BIG TIMBER

Proponents: Norma Jean Boles, Health Services Manager Dept. of Corrections

Jerry Lendorf, Montana Medical Association

Opponents: None

Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, SD 13, BIG TIMBER, explained SB 489 dealt with fourth and subsequent D.U.I.s. He reminded the committee fourth offense D.U.I.s became a felony from the 1995 legislature. He expressed the need to work with language in the bill pertaining to treatment of these offenders and how costly it has become. This bill does not change the felony status of this crime, but changes the way fourth offense D.U.I.s are dealt with. He said some offenders go without treatment due to inadequate staffing or if an offender, from the time of offense to the state prison, receives credit for sentence served and there would be no time for treatment allowed.

He stated the staffing for these treatments was inadequate due to the number of staff available. He said six months was the time period of treatment and it would be intensive. He explained the new program for treatment offering six to ten hours a day every day for six months. He said there would be enough high security risk offenders that would go through this program adding the cost savings to be substantial. He described the fiscal note and explained that after this biennium the savings would be \$3.2 million per year.

Proponents' Testimony:

Norma Jean Boles, Health Services Manager, Dept. of Corrections, handed out a testimony EXHIBIT(jus41a01).

Jerry Lendorf, Montana Medical Association, supports SB 489 and indicated the need for treatment to the offenders.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. RIC HOLDEN wondered about the savings and its impact. **Norma Jean Boles** explained treatment is not as expensive as secure custody. She felt this treatment would impact the population growth that was occurring within the Department of Corrections.

SEN. HOLDEN asked if these offenders would be locked up. **Norma Jean Boles** answered yes.

SEN. HOLDEN felt the treatment would not work. **Norma Jean Boles** said within this population, most studies recommend six months and traditionally the offenders receive 28 days to six weeks of treatment in most of the programs.

SEN. HOLDEN asked if this program would cost the state money rather than save the state money. **Norma Jean Boles** said the national research indicates for this population to be impacted. **Becky Buska, Budget Analyst, Department of Corrections**, said this bill would reduce the program in the residential phase and that would be the overall cost savings. She explained a reduced cost per day due to not being in a secured facility versus a treatment program.

SEN. MIKE HALLIGAN asked how they handled an offender, if the offender becomes uncooperative. **Norma Jean Boles** said those offenders who become uncooperative would serve hard prison time.

SEN. HALLIGAN asked if that would be internal procedures. **Norma Jean Boles** answered yes, they intend to develop sanctions.

SEN. MIKE HALLIGAN asked if the national literature indicated when the offender would begin to move out of the disease stage. **Norma Jean Boles** said they have not developed performance indicators for treatment as they have in the sex offender program. She said most of the changes for an offender would be motivation, ownership and the desire to change their behaviors to deal with the disease process.

SEN. DUANE GRIMES asked what has changed in treatment protocols and are other states using therapy models. **Norma Jean Boles** said other states have used the cognitive restructuring model with more success than traditional models. She said the development of this facility would allow treatment for a longer period of time and pointed out the change in protocol from years past.

{Tape 1; Side B}

SEN. GRIMES asked if this treatment is something the Department of Corrections has wanted to do or was it because there were no other options. **Norma Jean Boles** said they researched the trends and believed this model would assist offenders in need of treatment.

SEN. GRIMES asked if there was unanimity of thought from the counselors and professional community in the department that this was not an experiment, but a legitimate attempt. **Norma Jean Boles** said national studies have been focused on corrections and she felt this was a unique model.

SEN. JERRY O'NEIL asked if they were proposing consistent reduction rates for offenders. **Norma Jean Boles** answered yes.

SEN. O'NEIL asked if reduction compares to people, who go to prison programs rather than people going to substance abuse programs. **Norma Jean Boles** said substance abuse treatment is common to this program and they chose alcohol treatment.

SEN. O'NEIL asked what type of reduction rates can be expected. **Norma Jean Boles** said the statistics, from previous programs, showed significant reductions. She did not have the exact rate numbers available.

SEN. STEVE DOHERTY asked what they would do with the ten time offender. **Norma Jean Boles** said the 10th D.U.I. offender would go through this program. She explained the tracking of the offender would be for a longer period of time.

SEN. DOHERTY asked, if through statistics, they were convicting the same offender or new offenders. **Jeff Roskey, Statistics Bureau Chief, Department of Corrections**, explained from 1996 to 2000, under 1,100 offenders were convicted with a fourth time subsequent D.U.I. and 18% were convicted multiple times.

SEN. DOHERTY asked if the treatment was more effective with the first time offender or the fifth, fourth-time D.U.I. offender. **Norma Jean Boles** did not have an answer.

SEN. AL BISHOP referred to the fiscal note and asked how much time is actually spent in incarceration. **Jeff Roskey** said the average would be 13.8 months. He said he would search into that further and bring it forward to the committee.

Closing by Sponsor:

SEN. LORENTS GROSFIELD, SD 13, BIG TIMBER, pointed out this bill introduces a new approach and he reassured this was a felony offense. He explained the definitions of the offense as a felony and pointed out that a tenth offense D.U.I. states six to 13 months. He said the goal of this bill was to get away from the subsequent offenders and have them attend the treatment program to reduce the rate of offenders. He discussed the cost savings and how professionals would work one-on-one with the offenders providing security, but not having security guards around the building. There would be four to six professionals per 140 residents and there would be no need for high security, but it would be a secure facility. The effective date would begin January 21, 2002, which would allow time to establish the facility and time for finishing details with the treatment

program. He believed this program would be very aggressive and he urged the committee to support this bill.

HEARING ON SB 485

Sponsor: SEN. JON ELLINGSON, SD 33, MISSOULA

Proponents: NONE

Opponents: Susan Witte, Blue Cross and Blue Shield of MT.
Don Allen, Montana Benefits and Life

Opening Statement by Sponsor:

SEN. JON ELLINGSON, SD 33, MISSOULA, handed out a letter EXHIBIT(jus41a02) and a copy of a statement explaining a person's benefits EXHIBIT(jus41a03). He explained the letter and addressed the concern of how confidentiality is not secure through a statement of benefits. He felt this breach of confidentiality can become serious in particular circumstances. He discussed the medical rights of patients and how they were being violated through typical Explanation of Benefits Statements (EOB). Patients do not waive privacy rights to the people who become the subscriber.

Proponents' Testimony: None

Opponents' Testimony:

Susan Witte, Blue Cross and Blue Shield of MT., pointed out the problems pertaining to this bill and the administrative burden they believed would be placed on the healthcare industry. She mentioned SB 465, which is a rewrite of Montana's Insurance Privacy Protection Code. She addressed an example that adult children, 18 years of age or older, must notify the insurer that they could be harmed by disclosure of the explanation of benefits to the parent or primary subscriber and must provide an alternate address for the explanation of benefits.

Don Allen, Montana Benefits and Life, felt concerned about the administrative burden this bill would impose. He didn't see a need for this bill and asked for a do not pass.

Questions from Committee Members and Responses:

SEN. HOLDEN asked what the codes and services on the explanation of benefits statement were. SEN. ELLINGSON could not explain the codes, but referred to an 800# at the bottom of the statement to call and receive that information.

SEN. DOHERTY asked how these sections would effect the contingency voidance. **SEN. GRIMES** said if there was no constitutional amendment then there would be no contingent voidance.

SEN. GRIMES explained the percentages of young women, who cross state lines to get an abortion without having to notify their parents. He felt we should honor other state laws and constitutions by adding this bill to Montana's books.

Vote: Motion **SB 416 TO ADOPT** Sections 7 & 8 **carried unanimously.**

Motion: **SEN. GRIMES** moved **SB 416 DO PASS AS AMENDED.**

Discussion: None

Vote: Motion failed 4-5 with **SEN. HOLDEN, SEN. O'NEIL, SEN. GRIMES** and **CHAIRMAN GROSFIELD** voting yes.

Motion/Vote: **SEN. HALLIGAN** moved **SB 416 POSTPONE INDEFINITELY** reversing the roll call vote **motion carried.**

EXECUTIVE ACTION ON SB 452

Discussion:

SEN. HALLIGAN mentioned a letter contacting Pine Hills and said the evidence shown from the video was not true of times pepper spray was used at the school. He explained where pepper spray was kept and how the corrections officers were to assess the situation.

Motion/Vote: **SEN. HOLDEN** moved **SB 452 BE TABLED** carried 5-4 with **SEN. DOHERTY, SEN. MCNUTT, SEN. PEASE** and **SEN. GRIMES** voting no.

EXECUTIVE ACTION ON SB 489

Motion: **SEN. MCNUTT** moved **SB 489 DO PASS.**

Substitute Motion: **SEN. O'NEIL** made a substitute motion **SB 489 BE AMENDED.**

Discussion:

SEN. O'NEIL added this bill should include not only fourth offense D.U.I.s, but all higher accounts as well. He explained the prison time involved with each offense.

SEN. GRIMES said the fiscal impact would be great due to the prison time involved. **SEN. O'NEIL** explained this is a detriment to D.U.I. offenses and the offenders are getting two chances to straighten up their acts plus only 15-20% had subsequent D.U.I.s by going through these treatments.

Vote: Substitute Motion failed 7-1 with **SEN. O'NEIL** voting yes.

Discussion:

SEN. HOLDEN asked about the responsibility of the offender. **Dave Ohler, Attorney, Department of Corrections**, said page 13 explained the offenders responsibility.

SEN. HOLDEN asked for clarification if the judge set a dollar amount. **Dave Ohler** said the probation and parole officer would inquire into the financial abilities of the offender.

SEN. HOLDEN asked how they would phase out this program if it was a bust. **Dave Ohler** said if the program didn't work then possibly an amendment could be added.

SEN. GRIMES asked if by paying would impoverish the family left behind while the offender goes off to jail and if language in this bill should be amended. **Valencia Lane** said the court would take into consideration the factors of families with less financial abilities.

Vote: Motion **SB 489 DO PASS** carried with **SEN. DOHERTY** and **SEN. BISHOP** voting no.

EXECUTIVE ACTION ON SB 17

Motion: **SEN. O'NEIL** moved **SB 17 DO PASS AS AMENDED**. Amendments were handed out during second reading from Senate Floor debate and referred back to committee. **EXHIBIT(jus41a05)**.

Discussion:

SEN. O'NEIL explained the amendments.

SEN. HALLIGAN mentioned his bill and the abandoned baby issue and the framework of the bill. He asked if the amendments leave in

TESTIMONY ON SB 489

- Fourth and subsequent DUI Offenses have significantly impacted the population growth in Corrections since this offense became a felony. For example, offenses in this category for the last 4 years are as follows:

FY - 97	Convictions - 253	Offenders - 233	SENATE JUDICIARY
FY - 98	Convictions - 229	Offenders - 208	EXHIBIT NO. <u>1</u>
FY - 99	Convictions - 225	Offenders - 205	DATE <u>02/19/01</u>
FY - 00	Convictions - 292	Offenders - 274	BILL NO. <u>SB 489</u>

Aside from the population growth, the Department has found this population raised our medical and programming costs. Currently 93 of these offenders reside at MSP, 11 at Crossroads Correctional Center, 10 at MWP and the remainder in Pre-release centers. Pre-release centers with chemical dependency programming have significant waiting lists.

- This bill would allow the development an alcohol treatment center/therapeutic community designed specifically for fourth and subsequent DUI offenders. Rather than sentencing the offender to prison confinement the offender could be placed in an intensive residential alcohol treatment program. This will give the Department a critical tool necessary for controlling population levels in secure custody over the upcoming biennium and will save money.
- Secure prison space is very costly to build and this population generally does not need the secure custody model, which would add a significant number of 24 hour/7 day per week security posts and expensive hardware.
- Currently less than one third of 4th and subsequent DUI offenders are actually receiving chemical dependency treatment at Montana State Prison before they are back in their communities.
- The residential alcohol treatment program/Therapeutic Community design has the following advantages:
 - . The Treatment model is less expensive than hard cells resulting in cost savings;
 - . Emphasis can be on treatment rather than custody;

Exh. #1

- . A new program focused on treatment may lend itself to the acquisition of highway traffic safety monies for start up and/or operating expenses;
- . Greater flexibility in dealing with the DUI offender

- National research indicates that successful outcomes are tied to the length of time in treatment at least 6 months. Further, recent research and evaluation of such programs in other states show consistent reductions in recidivism rates for offenders completing substance abuse programs.
- The Department of Corrections proposes utilizing the Xanthopoulos building on the Warm Springs campus. The building would easily lend itself to this type of treatment program and could provide residential treatment services to 140 Offenders. Given the building design, the facility would require minimal remodeling for a treatment facility.
- The treatment program would be a therapeutic community model in two stages. A typical day in Stage I would include six hours of intensive therapy facilitated by qualified counselors followed by two hours of peer group study and homework. Stage two would consist of an intensive group study therapeutic model. The concepts of cognitive restructuring centered around the criminal thinking involved in chronic DUI behavior will be employed as these concepts tend to produce successful outcomes in this type of offender. This phase will enable group members to identify criminal thinking in others as well in themselves and to use this skill every day in all aspects of their lives. Work-study in relapse prevention will also be incorporated.
- The availability of a gymnasium offers the opportunity to develop the habit of using physical exercise as a healthy method of stress management and diverting from drinking behavior.
- When fully implemented this program could serve 280 DUI offenders per year. In order to be cost-effective, the program would need to run close to capacity and judges would need to perceive this as the strongly preferred option for sentencing.
- The proximity of the Xanthopoulos Unit to Montana State Prison would create the opportunity to contract with the MSP laundry and food service programs at cost-effective rates.

- The sanction of being placed at the Xanthopoulos Unit at Warm Springs will satisfy the public's need to remove chronic DUI offenders from the community for a period of time. They will transition back into their communities under mandatory parole supervision and aftercare programming.

- The Department of Corrections intends to issue an RFP for operation of this program. A tentative budget was developed to calculate costs for the RFP process.

Respectfully submitted,

A handwritten signature in cursive script that reads "Norma Jean Boles".

Norma Jean Boles

Health Services Manager

Department of Corrections

MONTANA SENATE
2001 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 02/19/01 BILL # SB 485 AMENDMENT #

MOTION: _____

Substitute motion O'Neil

NAME	AYE	NAY
SEN. AL BISHOP	✓	
SEN. STEVE DOHERTY		✓
SEN. MIKE HALLIGAN		✓
SEN. RIC HOLDEN	✓	
SEN. WALT MC NUTT	✓	✓
SEN. JERRY O'NEIL	✓	
SEN. GERALD PEASE		✓
SEN. DUANE GRIMES, VICE CHAIRMAN	✓	
SEN. LORENTS GROSFIELD, CHAIRMAN		✓

*4 - 5 fail on substitute
motion
of O'neils*

*✓ Carries unanimously on
Amendments of Halligan*

O'neil voting NO 8-1

do pass AS amended

5-4 table vote on SB 485



SENATE STANDING COMMITTEE REPORT

February 19, 2001

Page 1 of 1

Mr. President:

We, your committee on Judiciary report that Senate Bill 489 (first reading copy - white) do pass.

Signed:

A handwritten signature in cursive script, reading "Lorents Grosfield", is written over a horizontal line.

Senator Lorents Grosfield, Chair

- END -

Committee Vote:

Yes 6, No 2.

411241SC.sjo

Handwritten initials, possibly "gn", are located at the bottom right of the page.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on March 13, 2001 at
9:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: **SB 489 - 3-06-01**
SB 487 - 3-06-01

HEARING ON SB 489

Sponsor: Senator Lorents Grosfield, SD 13, Big Timber said this Bill deals with DUI and advising the penalties for felony DUI which means 4th or subsequent offense. In 1995 the legislature first passed the felony DUI making the 4th offense a felony and providing for some prison time. Since that time some of the penalties have been adjusted by the legislature and this is a Bill that will do more. This Bill will establish a new or different program than is handled now. The program is an intensive residential alcohol treatment program trying to further reduce recidivism and this Bill would establish that treatment program.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 18}

Proponents: Bill Slaughter, Director, Department of Corrections.

Norma Jean Boles, Health Services Manager,
Department of Corrections EXHIBIT(juh57a01) EXHIBIT(juh57a02)

{Tape : 1; Side : A; Approx. Time Counter : 18 - 29.9}

{Tape : 1; Side : B; Approx. Time Counter : 0.1 - 1.3}

J. D. Lynch, Southwest Montana Rehabilitation Center,
Inc.

Betty Whiting, Montana Association of Churches,
Billings

Jim Smith, Sheriff's and Peace Officer's Association

Opponents: Senator Chris Christiaens, SD 23, Great Falls spoke as a proponent but was considered an opponent by the Chairman.

Marty Lambert, Gallatin County Attorney
EXHIBIT(juh57a03) EXHIBIT(juh57a04)

Mike Grayson, County Attorney, Anaconda-Deer Lodge
County.

William Muhs, MADD, Gallatin County

Christopher Miller, County Attorney, Deer Lodge

{Tape : 1; Side : B; Approx. Time Counter : 1.3 - 29.8}

{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 3.4}

Candace Payne, Rimrock Foundation EXHIBIT(juh57a05)

George Corn, Ravalli County Attorney

Ed Zink, Yellowstone County Attorney

{Tape : 2; Side : A; Approx. Time Counter : 3.4 - 16.9}

Questions from Committee Members and Responses: Reps. Gallus, Newman, to Senator Grosfield and Mr. Lynch.

{Tape : 2; Side : A; Approx. Time Counter : 16.9 - 30.1}

{Tape : 2; Side : B; Approx. Time Counter : 0.1 - 1.4}

Further Questions: Reps. Younkin, Gallus, Rice, Hurdle, Mangan, Harris, Clark, Peterson, Curtiss, Noennig, Shockley to Mr. Lambert, Mr. Slaughter, Senator Grosfield, Ms. Boles, Mr. Zink, Ms. Payne. Becky Buska, Budget Bureau Chief, Department of Corrections, for clarification.

{Tape : 2; Side : B; Approx. Time Counter : 1.4 - 30.1}

{Tape : 3; Side : A; Approx. Time Counter : 0.1 - 29.9}

{Tape : 3; Side : B; Approx. Time Counter : 0.1 - 12.8}

Closing by Sponsor: Senator Grosfield closed the Hearing on SB 489 stating this Bill only deals with alcohol, with DUIs and does not deal with drugs and drug addiction. The average sentence is 13.8 months and the average time in prison is 9.4 months. That is 6 months in treatment. In Montana State Prison the ratio between staff and prisoners is approximately one staff for four prisoners. The ratio in the Xanthopoulos Building, projected, is about one for ten so that is a big cost difference. There would be technicians instead of having to train guards, which would be a lighter level of training. Currently the average time in prison is 9.4 months at \$58 or \$59 a day versus six months at \$45 a day. That is a very significant part of the cost differential.

{Tape : 3; Side : B; Approx. Time Counter : 12.8 - 23.8}

HEARING ON SB 487

Sponsor: Senator Mike Halligan, SD 34, Missoula EXHIBIT(juh57a06) EXHIBIT(juh57a07) said this Bill codifies those guidelines as described in EXHIBIT 6. It's already being followed and is in

TESTIMONY ON SB 489

EXHIBIT 1
DATE 3-13-01
SB 489

- Fourth and subsequent DUI Offenses have significantly impacted the population growth in Corrections since this offense became a felony. For example, offenses in this category for the last 4 years are as follows:

FY – 97	Convictions – 253	Offenders – 233
FY – 98	Convictions – 229	Offenders – 208
FY – 99	Convictions – 225	Offenders – 205
FY – 00	Convictions – 292	Offenders – 274

Aside from the population growth, the Department has found this population raised our medical and programming costs. Currently 93 of these offenders reside at MSP, 11 at Crossroads Correctional Center, 10 at MWP and the remainder in Pre-release centers. Pre-release centers have significant waiting lists.

- This bill would allow the development an alcohol treatment center/therapeutic community designed specifically for fourth and subsequent DUI offenders. Rather than sentencing the offender to prison confinement the offender could be placed in an intensive residential alcohol treatment program. This will give the Department a critical tool necessary for controlling population levels in secure custody over the upcoming biennium and will save money.
- Secure prison space is very costly to build and this population generally does not need the secure custody model, which would add a significant number of 24 hour/7 day per week security posts and expensive hardware.
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- The residential alcohol treatment program/Therapeutic Community design has the following advantages:

- . The Treatment model is less expensive than hard cells resulting in cost savings;
- . Emphasis can be on treatment rather than custody;

- . A new program focused on treatment may lend itself to the acquisition of highway traffic safety monies for start up and/or operating expenses;
- . Greater flexibility in dealing with the DUI offender

- National research indicates that successful outcomes are tied to the length of time in treatment at least 6 months. Further, recent research and evaluation of such programs in other states show consistent reductions in recidivism rates for offenders completing substance abuse programs.
- The Department of Corrections proposes utilizing the Xanthopoulos building on the Warm Springs campus. The building would easily lend itself to this type of treatment program and could provide residential treatment services to 140 Offenders. Given the building design, the facility would require minimal remodeling for a treatment facility.
- The treatment program would be a therapeutic community model in three stages. A typical day in Stage I would include six hour of structured assessment and orientation, Stage II would include six hours of intensive therapy facilitated by qualified counselors followed by two hours of peer group study and homework utilizing the cognitive restructuring model. Stage III would consist of an intensive group study therapeutic model focusing on relapse prevention. The concepts of cognitive restructuring centered around the criminal thinking involved in chronic DUI behavior will be employed as these concepts tend to produce successful outcomes in this type of offender. This program will enable group members to identify criminal thinking in others as well in themselves and to use this skill every day in all aspects of their lives.
- The availability of a gymnasium offers the opportunity to develop the habit of using physical exercise as a healthy method of stress management and diverting from drinking behavior.
- When fully implemented this program could serve 280 DUI offenders per year. In order to be cost-effective, the program would need to run close to capacity and judges would need to perceive this as the strongly preferred option for sentencing.
- The proximity of the Xanthopoulos Unit to Montana State Prison would create the opportunity to contract with the MSP laundry and food service programs at cost-effective rates.

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- The Department of Corrections intends to issue an RFP for operation of this program. A tentative budget was developed to calculate costs for the RFP process.

Respectfully submitted,

A handwritten signature in cursive script, reading "Norma Jean Boles".

Norma Jean Boles

Health Services Manager

Department of Corrections



March 13, 2001

EXHIBIT 2
DATE 3-13-01
SB 489

Fact Sheet

Therapeutic Communities

THERAPEUTIC ENVIRONMENT

Offenders will be placed in a secure facility on the Warm Springs campus, which ensures 24 hour, 7 day a week lock-up within the building. Supervised transportation to the courts and medical services will be the only times offenders may leave the facility.

UNDERSTANDING THE PROCESS

Offenders progress through phases from orientation (1 month) to primary treatment (4 months) and then to re-entry (1 month). Orientation is important in order to prepare for primary treatment. To do this, offenders must learn the process, the terminology and the structure of the program, and then the real work begins.

Offenders are rewarded and earn privileges as they progress through the process and various phases of the program. Privileges include use of the telephone, visiting and refreshments.

THERAPEUTIC COMMUNITY PHILOSOPHY

Reality awareness states that everyone is responsible for his own behavior - not society, not the environment, not heredity, not the past, but each person now.

Awareness is helping people to learn how to take a look at what they are doing, and then teaching them to evaluate their behavior and to make a plan to do better.

Reality brings us to the realization that we must stop running away to avoid coming face to face with our real selves, and we must begin to attack the criminal mask and strip away our negative images and live once again, not as character disorders but as successful people.

It is not a textbook or a magic solution to problems. It is accepting responsibility for what one does. It is not looking for blame, or finding fault or dwelling on the past or feeling sorry for oneself.

It is striving to do better within the reality of one's own situations. It is Life. It is hard work. It is the way you live with yourself and with others.

WHAT IS A THERAPEUTIC COMMUNITY?

A therapeutic community is a positive environment where people who have similar problems of alcohol abuse, live and work together to better their lives. The structure is set up like a large family, with staff representing the parents or authority figures. There is a chain of command that must be followed. In other words, it is a hierarchy, with all residents striving to earn better jobs, privileges and status in the community. Movement up the ladder requires complying with the rules, participating in all group activities and doing your present job well. In order to participate in the proper way in an encounter, honesty is most important, and awareness of the major feelings of trust, anger, fear, hurt, and love. Eventually participants will learn to identify and relate to these feelings as a means to understanding themselves.

COGNITIVE RESTRUCTURING

The process of planned restructuring to facilitate the offender learning new ways of thinking in order to accept responsibility for what he/she has done. In the cognitive restructuring approach, offenders become more competent thinkers and learn to look at their substance abuse/criminal cycle so that they will be able to intervene in the cycle to avoid offending in the future.

CONFRONTING NEGATIVE BEHAVIOR

One of the primary purposes of this therapeutic community is to help offenders change their lifestyles from negative, self-defeating and self-destructive ones to a positive, healthy and law-abiding style of life. Failure to confront negative behavior is interpreted by the community as supporting it; as not wanting to help that person get better. The community will not allow people who support negative behavior to live there.

SENSE OF COMMUNITY

A therapeutic community has a horizontal structure, which connects each equally to each other as our brother's keeper. Offenders function for the common good with a common purpose. The community promotes unity and oneness.

POSITIVE PEER INFLUENCE

A therapeutic concept involves peers helping peers. A positive peer-culture program involves using the strength of the reformed, and inspires the residents to help one another so that they might help themselves.

EFFECTIVENESS OF THE PROGRAM

Many evaluation research studies have consistently demonstrated the effectiveness of the therapeutic community model (DeLeon 1979; Gerstein & Harwood 1990; Hubbard et al., 1988 Simpson, 1979, 1980).

These studies show that the Therapeutic Community model has demonstrated effectiveness in reducing crime and substance abuse while increasing pro-social behavior (e.g. employment). A key finding in these studies was that positive outcomes increased with time spent in the program.

In the area of substance abuse treatment, the therapeutic community (TC) has become synonymous with residential treatment. The widespread acceptance of therapeutic communities is directly associated with a number of studies showing successful outcomes for community TCs over the years (e.g., DeLeon, Wexler & Jainchill 1982; DeLeon & Ziegenfuss 1986), and more recently similar results are appearing for prison TCs (Falkin, Wexler&Lipton 1992). The Prison therapeutic community model outcome research has led to recent acceptance of prison therapeutic communities as a major innovation in American prisons (Wexler 1994).

NIAAAEXHIBIT 3
DATE 3-13-01
SB 489

Research on Strategies to Prevent Drinking Under the Influence (DUI) Recidivism

The effectiveness of efforts to deter drinking and driving has been attributed to three factors: the certainty, severity, and swiftness of the sanctions available. On the basis of these principles, many recent changes in DWI laws, their enforcement, and administrative procedures have been proposed to enhance deterrence. These policy changes represent natural experiments and provide numerous opportunities for evaluation and testing of new or redesigned interventions.

Among the recent drinking and driving interventions that focus on severity of punishment are increases in minimum fines and heavier jail sentences, particularly for repeat offenders. Efforts to increase the certainty of sanctions include such innovations as systematic police roadblocks. Administrative license revocation is intended to provide punishment that is both more certain and more swift. Indirect approaches to deterrence include civil liabilities levied against commercial (and social) servers of alcohol to underage or clearly intoxicated individuals.

Recent studies provide evidence that policy-driven interventions have been successful, such as random safety checks, targeted enforcement, and ignition interlocks, but more research is needed in this area.

Research is invited on a variety of topics related to reduction of drinking and driving, including but not limited to:

- Research on the effectiveness of multicomponent and alternative environmental approaches to deter drinking and driving;
- Further testing of community-wide campaigns involving intensified enforcement and community education;
- Additional studies exploring the effectiveness of server intervention in reducing alcohol consumption by bar patrons;
- Assessments of youth drinking and driving countermeasures which focus on regulatory or legislative interventions;
- Determining whether and how educational strategies, which focus largely on knowledge enhancement and changing attitudes, can increase the effectiveness of policy initiatives; and
- Research on other special populations which have exhibited high or increased risk for drinking and driving, such as women, rural populations, and selected ethnic/minority groups. For example, there is need for increased information on the changing patterns of female drinking and driving.

Economic analyses of the costs of deterrence-based interventions are necessary to formulate wise public policy. Appropriate policy choices depend on knowing the costs associated with various options for intervening to reduce drinking and driving. Cost-benefit comparisons can also be made between various deterrence programs, e.g. such as random safety checks compared with targeted enforcement. In comparing programs, attention should be paid both to their relative effectiveness and efficiency of administration. Additionally, the frequency and circumstances under which informal

interventions occur (e.g., preventing a friend or acquaintance from driving while intoxicated) merit consideration. Over time such informal efforts may become formalized group policies.

For more information, please contact:

Susan E. Martin, Ph.D.
Division of Clinical and Prevention Research
National Institute on Alcohol Abuse and Alcoholism
6000 Executive Blvd., Suite 505
Bethesda, MD 20892-7003
Phone: 301-443-8767; FAX: 301-443-8774
E-mail: smartin@willco.niaaa.nih.gov

Research Programs

NIAAA Home Page

EXHIBIT 4
DATE 3-13-01
SB 789

Strategies for Dealing with the Persistent Drinking Driver

Barry M. Sweedler

National Transportation Safety Board, Washington, DC 20594, USA

ABSTRACT

In the last decade, substantial reductions have occurred in drinking and driving in the United States and throughout the industrialized world. While this progress is encouraging, the tragic toll of drinking and driving is still much too high, and there remains a group of persistent drinking drivers who do not appear to be deterred by the threat of social disapproval or legal punishment. Persistent drinking drivers represent an estimated 65 percent of fatally injured drinking drivers, or about 30-35 percent of drivers killed in the United States each year. More innovative measures must be taken to effect the behaviour of the persistent drinking driver.

Obviously, there is no single solution that will bring this problem under control. However, there are definite, practical, cost effective steps that each State can take to deal with the persistent driver. These suggested strategies are based on the consensus of experts in the field who attended a Transportation Research Board Workshop in July 1994. This paper describes the range of strategies that can be implemented. These strategies are primarily aimed at making the threat of serious consequences more concrete for those who continue to drive without a license and at administratively separating the illegal drivers from the vehicles they continue to illegally drive.

INTRODUCTION

During the past decade, substantial reductions have occurred in drinking and driving in the United States and throughout the industrialized world. In 1982, 57 percent of all highway fatalities in the United States were related to alcohol; by 1994, that figure had been reduced to 42 percent. In that same period, the number of alcohol-related fatalities dropped from 25,165 to 16,884 -- a reduction of 33 percent (NHTSA 1995).

Progress appears to have resulted in large part from tougher laws, better enforcement, and greater public awareness. In addition, the raising of the drinking age has had a significant effect on young drivers (Stewart and Voas 1994). Although this progress is encouraging, the tragic toll of drinking and driving is still much too high and there remains a group of persistent drinking drivers who do not appear to be deterred by the threat of social disapproval or legal punishment. Additional measures must be taken to further reduce the overall toll of drinking and driving. It is important to recognize that while the problem of the persistent drinking driver is a serious one, many alcohol-related fatalities involve drivers who have never been arrested before, and the traditional strategies that have been effective with this group must not be neglected. But whereas these countermeasures will continue to be effective for most drivers, more innovative measures must be taken to change the behavior of the persistent drinking driver.

comprehensive and efficient system for imposing and enforcing license penalties. Such a system includes the following components:

All States need the basic foundation of providing for prompt and certain revocation of the driving license for first and repeat offenders--the sanction found to be most effective.

Administrative license revocation (ALR) is the best way to achieve this goal.

Administrative license revocation has been found to be effective both as a general and as a specific deterrent. It is agreed generally that the best way to maximize the general deterrence effects of a law is to increase the certainty and swiftness of punishment. Unfortunately, the usual penalties applied through the judicial process to drinking drivers are far from swift or certain. The judicial process is slow under the best of circumstances, and a determined offender can engage in delaying tactics that can postpone punishment almost indefinitely. The average length of time between the offense and the imposition of any penalty can be 6 months (Stewart et al. 1987). Often, no penalty will ever be exacted. Offenders can plea bargain down to a lesser offense. Charges may be dismissed or offenders judged not guilty because of technical problems in the case. Research has shown that administrative revocation is effective in discouraging people in the general public from driving after drinking. One study (Zador et al. 1989) concluded that these laws reduced fatal nighttime crashes (which are likely to involve alcohol) by about 9 percent. These findings were supported by another study of 17 states with administrative revocation laws (Sigmastat 1989) that found a 6 percent average reduction in fatal crashes.

States should improve their traffic records and the delivery system for information to the courts and the police officers on the road. In this way, prosecutors and judges will have access to the complete prior record of the offender when charging and sentencing. In addition, the officer coming in contact with a driver will have the ability to quickly ascertain if that driver is legally licensed to drive and if that driver has been involved in an alcohol-related driving offense in the past. This information will allow officers to accurately identify, at the scene, repeat offenders and those who are driving illegally. The officer then can apply the full range of administrative sanctions the state permits to be taken against these offenders.

Common sense suggests that courts should have access to accurate driver records so that the appropriate penalties can be applied. It also makes sense that the easier it is for a police officer to determine the past alcohol-related traffic history of a driver stopped for a DWI offense, the more effective that officer will be in identifying those drivers who have prior DWI convictions or a record of DWI administrative actions. Easier determination of past alcohol-related traffic histories will allow the officer to apply the appropriate sanctions to the offender.

Driving while a license is suspended, revoked, or otherwise invalid, because of a DWI or a related offense, such as for a refusal to submit to a breath test, should be treated as a very serious offense.

This feature is one of the major areas needing attention. Although license suspension has been shown to be one of the more effective driving under the influence (DUI) countermeasures, driver compliance with the law is poor and enforcement is low. Among the problems identified through a series of California studies are (1) approximately 75 percent of suspended drivers at least occasionally drive while suspended, (2) the majority of traffic convictions and accidents that occur during periods of suspension/revocation are not prosecuted as suspension violations, (3) minimum mandatory fines and jail sentences often are not levied against those drivers convicted of suspension violations. There is also a frequent failure to increase or graduate sanctions as a function of a number of prior convictions,

group who received no impoundment order.

Other key or promising features of an effective program include:

Licenses reinstated following a DWI conviction should carry a lower legal BAC limit. Alcohol detected at or above this lower limit would be a basis for re-revoking a driver's license.

When the State of Maine lowered its legal BAC from .10 percent to .08 percent in 1988, it also lowered its BAC to .04 percent for persons with a previous operating while impaired conviction. As noted previously, Hingson in press examined the results of the law by comparing the experience in Maine with those in New Hampshire and Vermont for the first 3 years after the law went into effect. Nighttime fatal crashes involving drivers with previous operating while impaired convictions declined 38 percent in Maine during the 3 postlaw years, whereas they increased 50 percent in New Hampshire and Vermont, a highly statistically significant difference.

At checkpoints, officers should check for valid licenses.

Checkpoints offer the opportunity to detect persons driving with a suspended or revoked driver's license because result of a drinking and driving conviction. These checkpoints may be safety, traffic, belt-use, or sobriety checkpoints.

In most states, officers at a checkpoint may examine the license of every driver or a random sample of drivers passing the checkpoint location. The license examination provides an opportunity to apprehend individuals who might be driving in violation of their license sanction. Often, when this technique is used at sobriety checkpoints, more unlicensed than impaired drivers are found.

Special enforcement campaigns aimed at the persistent drinking driver should be carried out, such as the "Hot List" of multiple DWI offenders or the "Stakeout" of drivers who have lost their licenses, to check if they are driving.

A number of special programs have been designed to apprehend drivers who, even though they were prohibited from driving, continue to do so. The state of Ohio, as part of its Habitual Offender Program, instituted in 1991 the Habitual Offenders Tally, or "Hot" sheet, which lists offenders who have been convicted of DUI five or more times and whose driving privileges are currently suspended. Hot sheets for each county are tabulated and shared with each state trooper, local police departments, and sheriffs' offices for more effective targeting of those who continue driving while under suspension (Perlman 1994). The Ohio Department of Public Safety (DPS) distributes Hot Sheet News, a monthly newsletter to law enforcement agencies, judges, courts, and other interested parties. The publication reviews all multiple offenders who are apprehended and the agencies involved in the arrests. A special law enforcement awards program also recognizes the efforts of officers who have made an arrest of a multiple offender. From August 1, 1991, to May 1, 1994, 1,398 habitual offenders were arrested. This program has contributed to a 30 percent reduction in alcohol-related crash deaths in Ohio from 1990 to 1993 (Ohio DPS 1994).

All juvenile DWI offenders should be prosecuted as adults, and the record of these offenses should be preserved after the offender reaches adulthood. These actions will permit early identification of young adults who are becoming persistent drinking drivers.

Current laws in many states treat impaired drivers under 18 differently from adults. In particular, they may allow the young driver to be diverted into an education program that results in the offense being

Washington, DC, 1995.

National Highway Traffic Safety Administration, Preliminary Assessment of the Impact of Lowering the Illegal BAC Per Se Limit to 0.08 in five States, Washington, D.C., 1994.

National Highway Traffic Safety Administration, Press Release No. NHTSA 12-95, Washington, D.C., 1995.

National Transportation Safety Board, Safety Study: Deficiencies in Enforcement, Judicial, and Treatment Programs Related to Repeat Offender Drunk Driver, NTSB/SS-84/04, Washington, D.C., 1984.

Nichols, J. L., and Ross, H. L., The effectiveness of legal sanctions in dealing with drinking drivers. *Alcohol, Drugs and Driving*, Vol. 6 No. 2, 1990, pp. 33 to 60.

Ohio Department of Public Safety, Hot Sheet News, Columbus, Ohio, June 1994.

Peck, R. C., Wilson, R. J., and Sutton, L., Driver license strategies for controlling the persistent DUI offender. In Sweedler, B. (ed.), *Transportation Research Board Circular, Strategies for Dealing with the Persistent Drinking Driver*. No. 437, Washington, DC, 1995. Perlman, E. Moving toward none for the road. *Governing*, September 1994.

Presidential Commission on Drunk Driving. Final Report, GPO, Washington, D.C., 1983.

Rodgers, A. Effect of Minnesota's license plate impoundment law on recidivism of multiple DWI violators. *Alcohol, Drugs, and Driving*, Vol. 10, 1994, pp. 127 to 134.

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RIMROCK FOUNDATION

Call:
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EXHIBIT 5
DATE 3-13-01
406-248-3175 or SB 489
1-800-227-3953
comm.@rimrock.org



**MONTANA CANNOT AFFORD TO CONTINUE
INCARCERATING ITS WAY OUT OF THE PROBLEM
OF ALCOHOL AND DRUG ADDICTION
THERE IS AN ALTERNATIVE...
SB 483**

AN ALTERNATIVE FOR REPEAT DUI OFFENDERS

Court mandated treatment at the community-level, coupled with legal sanctions, offer the very best way to reduce recidivism and costs.

"Judges were looking for alternative sentencing options because there were so many drunk driving cases...there was no treatment in jails and we weren't solving the problem."

Judge Nolan
Maryland District Court

Termed, "**The Maryland Model**", a new approach was taken in Maryland in 1990. This model reduced DUI recidivism from 88% to 8%. Many other states have since adopted this model with similar results; Arizona, Boston, MA, Florida and New Mexico.

Research during the past decade has clearly demonstrated that when quality addiction treatment at the local level is combined with legal sanctions, recidivism is sharply reduced. Out of this research has come the concept of today's Drug Courts as well.

How Does the Model Work?

Quite simply. DUI repeat offenders receive a suspended sentence with the stipulation they spend six (6) months in treatment, maintain employment and pay all costs associated with treatment. Technology is used in place of incarceration – interlock devices and electronic monitoring, **AND THE OFFENDER FOOTS THE BILL**, not the taxpayer.

The profile of a DUI repeat offender might surprise you – 80% are employed, male, living in a household, and well over 50% have health insurance. **WHY SHOULD TAXPAYERS PAY FOR THEIR INCARCERATION?**

Isn't it time for Montana to adopt an effective approach to the problem of repeat non-violent offenders?

SB 483 Provides This Alternative Sentencing Option!

Courtesy of Rimrock Foundation
Prince George County Project, Maryland



FACTS:

- The National Prevalence Rate for alcoholism and drug dependence is 19.6%.
- Lifetime Prevalence Rates for Substance Use Disorders by Institution: *

Prisons	72.0%
	56.2% Alcohol
	53.7% Drug

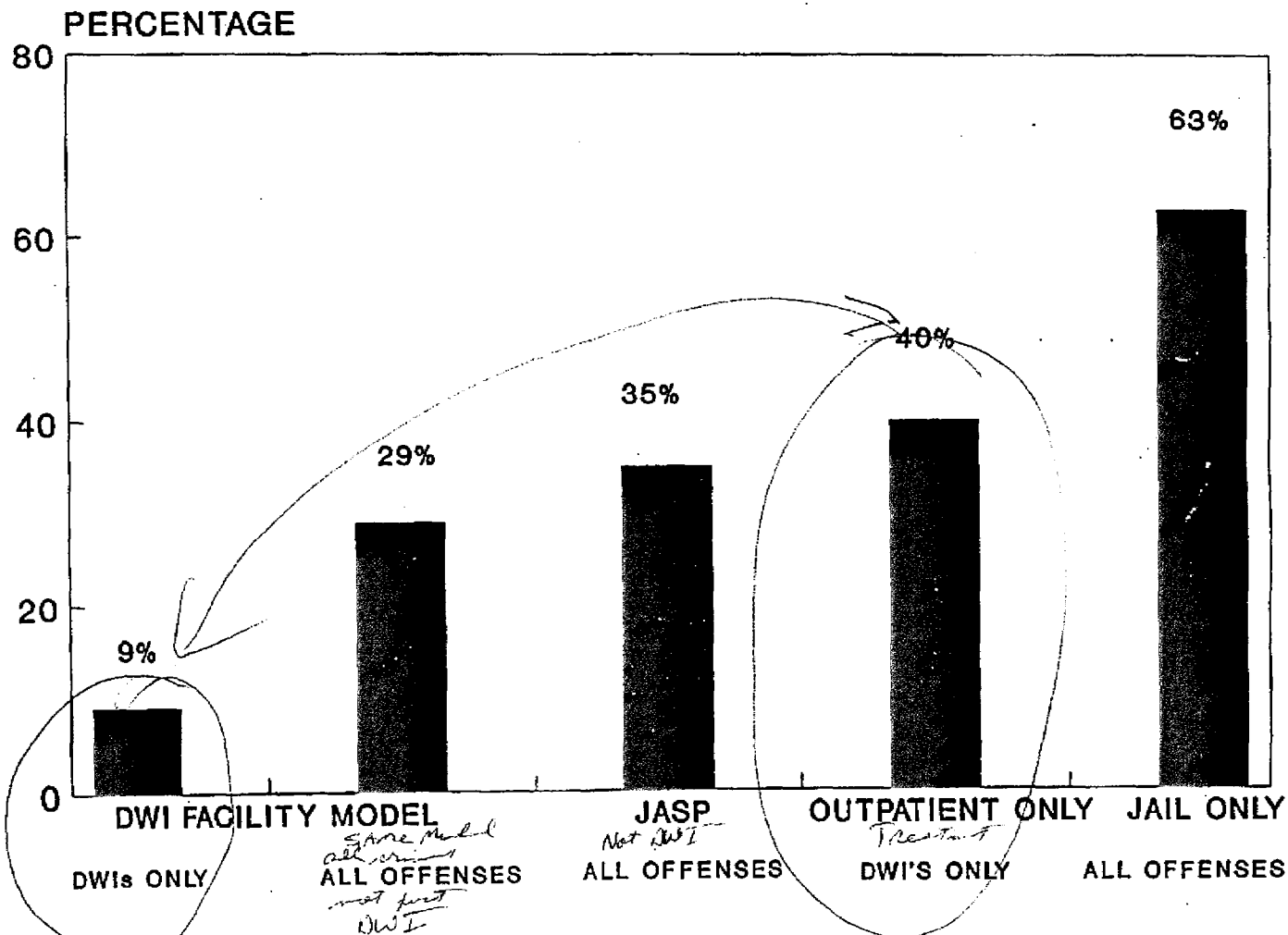
- 90% of offenders incarcerated will be released from prison.
- In excess of 70% of released offenders will re-offend.
- Quality treatment combined with punishment can reduce recidivism.

*NIMH Epidemiologic Catchment Data, Regier et al 1990

1231 N. 29TH ST. P.O. BOX 30374 BILLINGS, MT 59107 (406) 248-3175 (800) 227-3953 U.S.A./CANADA

Accredited by the Commission on Accreditation of Rehabilitation Facilities

DWI Services Inc. RECIDIVISM



Treatment + punishment

HOUSE OF REPRESENTATIVE
ROLL CALL

JUDICIARY

COMMITTEE

DATE 3-13-01

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. JIM SHOCKLEY, CHAIR	✓		
REP. JEFF LASZLOFFY, V.C.	✓		
REP. PAUL CLARK, V.C.	✓		
REP. DARREL ADAMS	✓		
REP. GILDA CLANCY	✓		
REP. AUBYN CURTISS	✓		
REP. BILL EGGERS	✓		
REP. STEVE GALLUS	✓		
REP. GAIL GUTSCHE	✓		
REP. CHRISTOPHER HARRIS	✓		
REP. LINDA HOLDEN	✓		
REP. JOAN HURDLE	✓		
REP. JEFF MANGAN	✓		
REP. BRAD NEWMAN	✓		
REP. MARK NOENNIG	✓		
REP. KEN PETERSON	✓		
REP. DIANE RICE	✓		
REP. BILL THOMAS	✓		
REP. MERLIN WOLERY	✓		
REP. CINDY YOUNKIN	✓		

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 3-13-01

BILL NO. SB 489

SPONSOR(S) Sen. Grosfield

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE
CIRCLE

NAME

ADDRESS

REPRESENTING

POI	Mike Grayson	County Attorney	ADL Conny
POI	Ed Zink	217 N. 27th Rm 701	Yellowstone County Att
POI	William Muhs	3435 Sentinel Dr Bozeman, MT	MADD Gallatin County
POI	George H CORN	Wana Hi County Courthouse	Ran/Hilich Attorney
POI	Martin Lambert	615 S. 16th B2M	Gallatin County
POI	Joan Lee Bikes	1539 11th Ave	DOC
POI	Constance Payne	P.O. Box 1448 Hh	MASPC Riverock
POI	Chris Miller	MCA A	Powell Co.
POI	JD Lynch 527 W Mercury	527 W Mercury	SW MRC
POI	Jim Smirkh		Sheriff's Assoc
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POI	Mancy Hollinghead	419 Maple Ave	Lazloff
POI		Laurie	
POI			

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

SA/visitor register form

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on March 28, 2001 at 10:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: None

Executive Action: **SB 489 - BCIAA - 14-6**

EXECUTIVE ACTION ON SB 489

Motion: REP. ADAMS moved that SB 489 BE CONCURRED IN. #1

Discussion: Rep. Shockley said this Bill was carried by Sen. Grosfield and ties into some of the things they have been doing to the Xanthopoulos Building. If SB 207 doesn't go to third reading before Friday, the Xanthopoulos Building will go to the County of Deer Lodge for \$1 dollar. It was envisioned by the Department the Xanthopoulos Building would be used for some long term treatment for DUI 4 and more. There will be a six month program called "therapeutic community". People who go there aren't really dangerous to the public, if they are not drinking and driving. There are people with 4th DUIs who simply won't qualify for the "X" Building because they have some other offenses. The people who go there would be low-risk people and they will be submerged in the program.

Motion: REP. SHOCKLEY moved that SB 489 BE AMENDED. #2
EXHIBIT(juh70a01)

Discussion: Reps. Eggers, Gutsche, Gallus, Hurdle, Shockley, Noennig

{Tape : 1; Side : A; Approx. Time Counter : 0 - 17.0}

Mr. MacMaster explained the Amendments, EXHIBIT 1.

{Tape : 1; Side : A; Approx. Time Counter : 17 - 27.1}

Discussion: Reps. Mangan, Gutsche, Younkin for further explanation of amendments.

{Tape : 1; Side : A; Approx. Time Counter : 27.1 - 29.7}

Discussion: Mr. MacMaster answered questions from Committee.

Reps. Shockley, Newman, Younkin, Noennig, Rice, Gutsche, Clark, Hurdle, Gallus, Peterson, Newman for clarification and explanation.

{Tape : 1; Side : B; Approx. Time Counter : 0.1 - 29.7}

{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 5.9}

Motion: REP. CLARK moved that SB 489 BE AMENDED to qualify after the 3rd DUI rather of the 4th DUI. #2

Discussion: Rep. Gallus to Mr. MacMaster and without objection, Joe Williams, Department of Corrections for clarification. Rep. Gallus asked Mr. Williams how many one-time offenses there were last year? Mr. Williams said they had 292 convictions involving 274 different felonies. Rep. Gallus asked how many third offense misdemeanors there were? Mr. Williams said almost 1200. Rep. Gallus asked if there would be capacity for a program that includes a third offense? Mr. Williams said no, not in the Xanthopoulos Building. Rep. Gallus said he is not opposed to Rep. Clark's idea but he does have some concerns about capacity.

Rep. Shockley said he thinks, at this late date, it is too late to turn this into a DUI 3 Bill. It has a large fiscal impact and there are not enough facilities available to handle the people.

Reps. Thomas, Mangan, Curtiss.

REP. CLARK withdrew his motion to amend SB 489.

Motion: REP. HARRIS moved that SB 489 BE AMENDED for 30 days actual hard time. #3

Discussion: Reps. Gallus, Harris to Bill Slaughter, Director, Department of Corrections.

Rep. Harris withdrew his motion to amend SB 489.

Vote: Shockley amendment carried 19-1 with Rep. Newman voting no.

Motion/Vote: REP. SHOCKLEY moved that SB 489 AS AMENDED be sent to House Appropriations. #4 Motion carried 16-4 with Reps. Laszloffy, Hurdle, Newman and Rice voting no.

Mr. MacMaster said he did not think the Committee could refer a Bill to another Committee. Only the House can. A Committee shall act on each Bill in its possession. First, if a Bill comes into the Committee you have to act on it, it can't sit there. Only the whole House, by a motion on the floor, can refer a Bill to another committee.

Motion/Vote: REP. GALLUS moved that SB 489 BE CONCURRED IN AS AMENDED with the recommendation that it be referred to another committee, the Appropriations Committee. #5 Motion carried 14-6 with Reps. Laszloffy, Clark, Harris, Hurdle, Newman, and Rice voting no.

{Tape : 2; Side : B; Approx. Time Counter : 0.1 - 5}

Discussion: Rep. Noennig explained that SB 1 is the blacklisting employment reference Bill. He spent a lot of time working with John Sullivan who is the attorney that was working with this, trying to satisfy all the concerns that were raised and to come up with a much better Bill to do what was intended. He thinks he has done that and would like the Committee to have the opportunity to study what has been done.

Motion/Vote: REP. NOENNIG moved that SB 1 BE TAKEN OFF THE TABLE. #6. Motion failed 7-10 with Reps. Clark, Curtiss, Eggers, Gallus, Gutsche, Harris, Hurdle, Mangan, Newman and Peterson voting no.

{Tape : 2; Side : B; Approx. Time Counter : 5 - 6.6}

Amendments to Senate Bill No. 489
3rd Reading Copy

EXHIBIT 1
DATE 3-28-01
SB 489

Requested by Representative Jim Shockley

For the House Judiciary Committee

Prepared by John MacMaster
March 28, 2001 (9:02AM)

1. Title, page 1, line 6.

Strike: "REQUIRING"

Insert: "ALLOWING"

2. Title, page 1, line 7.

Strike: "MUST"

3. Title, page 1, line 10.

Strike: "45-2-101,"

Strike: "AND"

Following: "61-8-731,"

Insert: "AND 61-8-732,"

4. Title, page 1, line 11.

Strike: "A DELAYED"

Insert: "AN"

5. Page 1, line 24 through page 11, line 15.

Strike: section 1 in its entirety

Renumber: subsequent sections

6. Page 12, line 29.

Strike: "(a)"

7. Page 13, line 2.

Strike: "(i)"

Insert: "(a)"

punishments provided in 61-8-714, 61-8-722, and 61-8-731, regardless of disposition, a defendant convicted of a violation of 61-8-401 or 61-8-406 shall complete:

- (a) a chemical dependency assessment;
- (b) a chemical dependency education course; and

(c) on a second or subsequent conviction for a violation of 61-8-401 or 61-8-406, except a fourth or subsequent conviction for which the defendant completes a residential alcohol treatment program under 61-8-731(2), or as required by subsection (8) of this section, chemical dependency treatment.

(2) The sentencing judge may, in the judge's discretion, require the defendant to complete the chemical dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before sentencing, the judge shall order the chemical dependency assessment as part of the sentence.

(3) The chemical dependency assessment and the chemical dependency education course must be completed at a treatment program approved by the department of public health and human services and must be conducted by a certified chemical dependency counselor. The defendant may attend a treatment program of the defendant's choice as long as the treatment services are provided by a certified chemical dependency counselor. The defendant shall pay the cost of the assessment, the education course, and chemical dependency treatment.

(4) The assessment must describe the defendant's level of addiction, if any, and contain a recommendation as to education, treatment, or both. A defendant who disagrees with the initial assessment may, at the defendant's cost, obtain a second assessment provided by a certified chemical dependency counselor or a program approved by the department of public health and human services.

(5) The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based upon the determination of one of the counselors.

(6) Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a chemical dependency education course or treatment program. If the

18. Page 15, line 15.

Following: "61-8-731"

Insert: "for offenses committed"

- END -

8. Page 13, line 3 through line 6.

Strike: "for" on line 3 through end of line 6

Insert: "for a term of 13 months. The court shall order that if the person successfully completes a residential alcohol treatment program operated or approved by the department of corrections, the remainder of the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may not be deferred or suspended, and the person is not eligible for parole.

(b) sentencing the person to either the department of corrections or the Montana state prison or Montana women's prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the term imposed under subsection (1)(a); and"

9. Page 13, line 7.

Strike: "(iii)"

Insert: "(c)"

10. Page 13, line 8 through line 9.

Strike: subsection (b) in its entirety

11. Page 13, line 25.

Following: "department"

Insert: "of corrections"

Strike: "(1)(a)(i)"

Insert: "(1)(a)"

12. Page 13, line 26.

Following: "department"

Insert: "of corrections"

13. Page 15, line 6.

Insert: "Section 3. Section 61-8-732, MCA, is amended to read:

"61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- assessment, education, and treatment required. (1) In addition to the

defendant fails to attend the education course or treatment program, the counselor shall notify the court of the failure.

(7) A court or counselor may not require attendance at a self-help program other than at an "open meeting", as that term is defined by the self-help program. A defendant may voluntarily participate in self-help programs.

(8) Chemical dependency treatment must be ordered for a first-time offender convicted of a violation of 61-8-401 or 61-8-406 upon a finding of chemical dependency made by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services.

(9) (a) On a second or subsequent conviction, the treatment program provided for in subsection (5) must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program.

(b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the court shall revoke the suspended sentence, if any, impose any remaining portion of the suspended sentence, and may include additional monthly monitoring for up to an additional 6 months."

{ Internal References to 61-8-732:

61-8-401* 61-8-401* 61-8-406* 61-8-410
61-11-101 } "

Renumber: subsequent sections

14. Page 15, line 9.

Strike: "2"

Insert: "1"

15. Page 15, line 11.

Strike: "2"

Insert: "1"

16. Page 15, line 12.

Insert: "(3) If Senate Bill No. 483 and [this act] are both passed and approved, then Senate Bill No. 483 is void."

17. Page 15, line 13.

Strike: "January 1, 2002"

Insert: "July 1, 2001"

HOUSE OF REPRESENTATIVE
ROLL CALL

JUDICIARY

COMMITTEE

DATE 3-28-01

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. JIM SHOCKLEY, CHAIR	✓		
REP. JEFF LASZLOFFY, V.C.	/		
REP. PAUL CLARK, V.C.	/		
REP. DARREL ADAMS	/		
REP. GILDA CLANCY	/		
REP. AUBYN CURTISS	/		
REP. BILL EGGERS	/		
REP. STEVE GALLUS	/		
REP. GAIL GUTSCHE	/		
REP. CHRISTOPHER HARRIS	/		
REP. LINDA HOLDEN	/		
REP. JOAN HURDLE	/		
REP. JEFF MANGAN	/		
REP. BRAD NEWMAN	✓		
REP. MARK NOENNIG	/		
REP. KEN PETERSON	/		
REP. DIANE RICE	/		
REP. BILL THOMAS	/		
REP. MERLIN WOLERY	/		
REP. CINDY YOUNKIN	✓		

House of Representatives

Roll Call Vote

JUDICIARY

COMMITTEE

DATE 3-28-01 Bill NO. SB 489 NUMBER #1MOTION: Rep. Adams moved Be Concurred in

Name	AYE	NO
Rep. Jim Shockley, Chairman		
Rep. Jeff Laszloffy, Vice Chair Majority		
Rep. Paul Clark, Vice Chair Minority		
Rep. Darrel Adams		
Rep. Gilda Clancy		
Rep. Aubyn Curtiss		
Rep. Bill Eggers		
Rep. Steve Gallus		
Rep. Gail Gutsche		
Rep. Christopher Harris		
Rep. Linda Holden		
Rep. Joan Hurdle		
Rep. Jeff Mangan		
Rep. Brad Newman		
Rep. Mark Noennig		
Rep. Ken Peterson		
Rep. Diane Rice		
Rep. Bill Thomas		
Rep. Merlin Wolery		
Rep. Cindy Younkin		

House of Representatives

Roll Call Vote

JUDICIARY

COMMITTEE

DATE 3-28-01 Bill NO. SB 489 NUMBER #2MOTION: Rep. Shockley moved amendment
motion carried 19-1

Name	AYE	NO
Rep. Jim Shockley, Chairman	✓	
Rep. Jeff Laszloffy, Vice Chair Majority	✓	
Rep. Paul Clark, Vice Chair Minority	✓	
Rep. Darrel Adams	✓	
Rep. Gilda Clancy	✓	
Rep. Aubyn Curtiss	✓	
Rep. Bill Eggers	✓	
Rep. Steve Gallus	✓	
Rep. Gail Gutsche	✓	
Rep. Christopher Harris	✓	
Rep. Linda Holden	✓	
Rep. Joan Hurdle	✓	
Rep. Jeff Mangan	✓	
Rep. Brad Newman		✓
Rep. Mark Noennig	✓	
Rep. Ken Peterson	✓	
Rep. Diane Rice	✓	
Rep. Bill Thomas	✓	
Rep. Merlin Wolery	✓	
Rep. Cindy Younkin	✓	

House of Representatives

Roll Call Vote

JUDICIARY

COMMITTEE

DATE 3-28-01 Bill NO. SB 489 NUMBER #2MOTION: Rep. Clark moved an amendment to qualify on the 3rd QOI instead of the 4th
Withdrawn

Name	AYE	NO
Rep. Jim Shockley, Chairman		
Rep. Jeff Laszloffy, Vice Chair Majority		
Rep. Paul Clark, Vice Chair Minority		
Rep. Darrel Adams		
Rep. Gilda Clancy		
Rep. Aubyn Curtiss		
Rep. Bill Eggers		
Rep. Steve Gallus		
Rep. Gail Gutsche		
Rep. Christopher Harris		
Rep. Linda Holden		
Rep. Joan Hurdle		
Rep. Jeff Mangan		
Rep. Brad Newman		
Rep. Mark Noennig		
Rep. Ken Peterson		
Rep. Diane Rice		
Rep. Bill Thomas		
Rep. Merlin Wolery		
Rep. Cindy Younkin		

House of Representatives

Roll Call Vote

JUDICIARY

COMMITTEE

DATE 3-28-01 Bill NO. SB 489 NUMBER #3MOTION: Rep. Harris moved an amendment
30 days actual hard time
Withdrawn

Name	AYE	NO
Rep. Jim Shockley, Chairman		
Rep. Jeff Laszloffy, Vice Chair Majority		
Rep. Paul Clark, Vice Chair Minority		
Rep. Darrel Adams		
Rep. Gilda Clancy		
Rep. Aubyn Curtiss		
Rep. Bill Eggers		
Rep. Steve Gallus		
Rep. Gail Gutsche		
Rep. Christopher Harris		
Rep. Linda Holden		
Rep. Joan Hurdle		
Rep. Jeff Mangan		
Rep. Brad Newman		
Rep. Mark Noennig		
Rep. Ken Peterson		
Rep. Diane Rice		
Rep. Bill Thomas		
Rep. Merlin Wolery		
Rep. Cindy Younkin		

House of Representatives

Roll Call Vote

JUDICIARY

COMMITTEE

DATE 3-28-01 Bill NO. SB 489 NUMBER #4MOTION: Rep. Shockley moved SB 489 as amended
Be Sent To House Appropriations

Name	AYE	NO
Rep. Jim Shockley, Chairman	✓	
Rep. Jeff Laszloffy, Vice Chair Majority		✓
Rep. Paul Clark, Vice Chair Minority	✓	
Rep. Darrel Adams	✓	
Rep. Gilda Clancy	✓	
Rep. Aubyn Curtiss	✓	
Rep. Bill Eggers	✓	
Rep. Steve Gallus	✓	
Rep. Gail Gutsche	✓	
Rep. Christopher Harris	✓	
Rep. Linda Holden	✓	
Rep. Joan Hurdle		✓
Rep. Jeff Mangan	✓	
Rep. Brad Newman		✓
Rep. Mark Noennig	✓	
Rep. Ken Peterson	✓	
Rep. Diane Rice		✓
Rep. Bill Thomas	✓	
Rep. Merlin Wolery	✓	
Rep. Cindy Younkin	✓	

16.

4

House of Representatives

Roll Call Vote

JUDICIARY

COMMITTEE

DATE 3-28-01 Bill NO. SB 489 NUMBER #5MOTION: Rep. Gallus moved SB 489 BCIAA
with the recommendation that it be
referred to the Appropriation Comm.
Motion Carried 14-6

Name	AYE	NO
Rep. Jim Shockley, Chairman	✓	
Rep. Jeff Laszloffy, Vice Chair Majority		✓
Rep. Paul Clark, Vice Chair Minority		✓
Rep. Darrel Adams	✓	
Rep. Gilda Clancy	✓	
Rep. Aubyn Curtiss	✓	
Rep. Bill Eggers	✓	
Rep. Steve Gallus	✓	
Rep. Gail Gutsche	✓	
Rep. Christopher Harris		✓
Rep. Linda Holden	✓	
Rep. Joan Hurdle		✓
Rep. Jeff Mangan	✓	
Rep. Brad Newman		✓
Rep. Mark Noennig	✓	
Rep. Ken Peterson	✓	
Rep. Diane Rice		✓
Rep. Bill Thomas	✓	
Rep. Merlin Wolery	✓	
Rep. Cindy Younkin	✓	

14

6



HOUSE STANDING COMMITTEE REPORT

March 28, 2001

Page 1 of 4

Mr. Speaker:

We, your committee on Judiciary recommend that Senate Bill 489 (third reading copy - blue) be concurred in as amended with the recommendation bill be referred to House Appropriations Committee.

Signed: _____

Representative Jim Shockley, Chair

To be carried by Representative Jim Schockley

And, that such amendments read:

1. Title, page 1, line 6.

Strike: "REQUIRING"

Insert: "ALLOWING"

2. Title, page 1, line 7.

Strike: "MUST"

3. Title, page 1, line 10.

Strike: "45-2-101,"

Strike: "AND"

Following: "61-8-731,"

Insert: "AND 61-8-732,"

4. Title, page 1, line 11.

Strike: "A DELAYED"

Insert: "AN"

5. Page 1, line 24 through page 11, line 15.

Strike: section 1 in its entirety

Renumber: subsequent sections

6. Page 12, line 29.

Committee Vote:

Yes 14, No 6.

701221SC 10c

Strike: "(a)"

7. Page 13, line 2.

Strike: "(i)"

Insert: "(a)"

8. Page 13, line 3 through line 6.

Strike: "for" on line 3 through end of line 6

Insert: "for a term of 13 months. The court shall order that if the person successfully completes a residential alcohol treatment program operated or approved by the department of corrections, the remainder of the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may not be deferred or suspended, and the person is not eligible for parole.

(b) sentencing the person to either the department of corrections or the Montana state prison or Montana women's prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the term imposed under subsection (1)(a); and"

9. Page 13, line 7.

Strike: "(iii)"

Insert: "(c)"

10. Page 13, line 8 through line 9.

Strike: subsection (b) in its entirety

11. Page 13, line 25.

Following: "department"

Insert: "of corrections"

Strike: "(1)(a)(i)"

Insert: "(1)(a)"

12. Page 13, line 26.

Following: "department"

Insert: "of corrections"

13. Page 15, line 6.

Insert: "Section 3. Section 61-8-732, MCA, is amended to read:

"61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- assessment, education, and treatment required. (1) In addition to the punishments provided in 61-8-714, 61-8-722, and 61-8-731, regardless of disposition, a defendant convicted of a violation of 61-8-401 or 61-8-406 shall complete:

(a) a chemical dependency assessment;
(b) a chemical dependency education course; and
(c) on a second or subsequent conviction for a violation of 61-8-401 or 61-8-406, except a fourth or subsequent conviction for which the defendant completes a residential alcohol treatment program under 61-8-731(2), or as required by subsection (8) of this section, chemical dependency treatment.

(2) The sentencing judge may, in the judge's discretion, require the defendant to complete the chemical dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before sentencing, the judge shall order the chemical dependency assessment as part of the sentence.

(3) The chemical dependency assessment and the chemical dependency education course must be completed at a treatment program approved by the department of public health and human services and must be conducted by a certified chemical dependency counselor. The defendant may attend a treatment program of the defendant's choice as long as the treatment services are provided by a certified chemical dependency counselor. The defendant shall pay the cost of the assessment, the education course, and chemical dependency treatment.

(4) The assessment must describe the defendant's level of addiction, if any, and contain a recommendation as to education, treatment, or both. A defendant who disagrees with the initial assessment may, at the defendant's cost, obtain a second assessment provided by a certified chemical dependency counselor or a program approved by the department of public health and human services.

(5) The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based upon the determination of one of the counselors.

(6) Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a chemical dependency education course or treatment program. If the defendant fails to attend the education course or treatment program, the counselor shall notify the court of the failure.

(7) A court or counselor may not require attendance at a self-help program other than at an "open meeting", as that term is defined by the self-help program. A defendant may voluntarily participate in self-help programs.

(8) Chemical dependency treatment must be ordered for a first-time offender convicted of a violation of 61-8-401 or 61-8-406 upon a finding of chemical dependency made by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services.

(9) (a) On a second or subsequent conviction, the treatment program provided for in subsection (5) must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program.

(b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the court shall revoke the suspended sentence, if any, impose any remaining portion of the suspended sentence, and may include additional monthly monitoring for up to an additional 6 months."

Renumber: subsequent sections

14. Page 15, line 9.

Strike: "2"

Insert: "1"

15. Page 15, line 11.

Strike: "2"

Insert: "1"

16. Page 15, line 12.

Insert: "(3) If Senate Bill No. 483 and [this act] are both passed and approved, then Senate Bill No. 483 is void."

17. Page 15, line 13.

Strike: "January 1, 2002"

Insert: "July 1, 2001"

18. Page 15, line 15.

Following: "61-8-731"

Insert: "for offenses committed"

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON APPROPRIATIONS

Call to Order: By **CHAIRMAN STEVE VICK**, on April 2, 2001 at 3:00 P.M., in Room 102 Capitol.

ROLL CALL

Members Present:

Rep. Steve Vick, Chairman (R)
Rep. Dave Lewis, Vice Chairman (R)
Rep. Matt McCann, Vice Chairman (D)
Rep. John Brueggeman (R)
Rep. Rosalie (Rosie) Buzzas (D)
Rep. Tim Callahan (D)
Rep. Edith Clark (R)
Rep. Bob Davies (R)
Rep. Stanley Fisher (R)
Rep. Dick Haines (R)
Rep. Joey Jayne (D)
Rep. Dave Kasten (R)
Rep. Christine Kaufmann (D)
Rep. Monica Lindeen (D)
Rep. Jeff Pattison (R)
Rep. Art Peterson (R)
Rep. Joe Tropila (D)
Rep. John Witt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Paula Broadhurst, Committee Secretary
Taryn Purdy, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Executive Action: SB 483, SB 489, HB 651, SB 338

EXECUTIVE ACTION ON SB 489

Motion: REP. LEWIS moved SB 489 BE AMENDED. Amendments were handed out EXHIBIT(aph74b01).

Discussion:

CHAIRMAN VICK explained the amendments and changes added.

Vote: Motion carried unanimously.

Substitute Motion: REP. KAUFMANN made a substitute motion to segregate Sections One through Six of the amendments.

Discussion:

REP. DAVE KASTEN wondered about the language pertaining to chemical dependency. CHAIRMAN VICK explained the bill dealt with third time D.U.I. offenses and another bill dealt with fourth time D.U.I. offenses.

{Tape 1; Side B}

REP. MATT MACCANN asked if the program covered drug addictions. REP. KAUFMANN said it would expand the program to cover drug addictions including alcohol abuse.

REP. JAYNE stated the statutes were worded to include both drugs and alcohol.

REP. EDITH CLARK asked if an offender would be excluded from the program for having other substance abuses. Jane Hamon, Office of Budget and Program Planning, said the intent of the bill was to create a new program for D.U.I. prevention.

REP. MONICA LINDEEN asked if most programs were considered chemical dependency programs. Norma Jean Bowles answered both would be treated.

REP. ROSIE BUZZAS asked if federal funding would not be available if the program was called a chemical dependency program rather than an alcohol program. Jane Hamon said the federal government had funds available for D.U.I. prevention. Joe Williams, Department of Corrections, explained the process of applying for federal funding.

Vote: Substitute Motion failed 8-9 with REP. BUZZAS, REP. CALLAHAN, REP. HAINES, REP. JAYNE, REP. KAUFMANN, REP. LINDEEN, REP. MCCANN and REP. TROPILA voting aye.

Motion/Vote: REP. LEWIS moved SB 489 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 651

Motion: REP. LEWIS moved HB 651 DO PASS.

Discussion:

REP. JAYNE asked about the amount of money available. REP. LEWIS said there was \$858,000 available and \$390,000 was coming out.

REP. JAYNE asked how much of the \$858,000 goes into the account. REP. KASTEN said for 2002 the amount was \$900,000. REP. LEWIS said if expenses rose 7% and revenue grew 5% they would be out of fund balance by 2007. REP. FISHER mentioned it would terminate in 2003.

REP. KAUFMANN asked about the fund balance and uses not directly related to the original purpose. REP. LEWIS explained the balance and the process of use.

{Tape 2; Side A}

REP. KAUFMANN hoped there were ways to fund the important needs in the state.

REP. HAINES questioned the dental program and thought the bill was good for the economy.

REP. PATTISON asked how the money would be divided between three programs. REP. LEWIS explained the amounts adopted previously.

CHAIRMAN VICK felt the bill set a bad example to raid funding. He thought the tax should be lowered and there should be general fund money available.

REP. BUZZAS didn't think the bill was effecting any existing laws.

Vote: Motion carried 12-5 with REP. BRUEGGEMAN, REP. JAYNE, REP. KASTEN, REP. PATTISON and CHAIRMAN VICK voting no.

Amendments to Senate Bill No. 489
2nd Reading/2nd House Copy

For the House Appropriations Committee

Prepared by Taryn Purdy
April 2, 2001 (12:53PM)

1. Page 17, line 4.

Following: "instruction."

Strike: "(1)"

2. Page 17, line 7 and line 8.

Strike: line 7 and line 8 in their entirety

3. Page 17, line 9 and line 10.

Strike: line 9 and line 10 in their entirety

Explanation - the first amendment strikes the language stating that if a resolution directing that the forensics building remain a state facility is not passed, (new) section 1 is void. The second amendment strikes the language that voids SB 483 if this bill passes.

- END -

House of Representatives

Roll Call Vote

Do Concur

APPROPRIATIONS COMMITTEE

DATE 4-2-01 BILL NO. SB489 NUMBER 18-D

MOTION: Rep Lewis amendment SB48901-21p

Name	AYE	NO
Dave Lewis (R)		
John Brueggeman (R)		
Rosalie Buzzas (D)		
Tim Callahan (D)		
Edith Clark (R)		
Bob Davies (R)		
Stanley Fisher (R)		
Dick Haines (R)		
Joey Jayne (D)		
Dave Kasten (R)		
Christine Kaufmann (D)		
Monica Lindeen (D)		
Matt McCann (D)		
Jeff Pattison (R)		
Art Peterson (R)		
Joe Tropila (D)		
John Witt (R)		
Steve Vick (R)		

House of Representatives

Roll Call Vote

Fail

APPROPRIATIONS COMMITTEE

DATE 4-2-01 Bill NO. SB489 NUMBER 8-9

MOTION: Rep Kaufman amendment SB48903.2
1-6

Name	AYE	NO
Dave Lewis (R)		✓
John Brueggeman (R)		✓
Rosalie Buzzas (D)	✓	
Tim Callahan (D)	✓	
Edith Clark (R)		✓
Bob Davies (R)		✓
Stanley Fisher (R)		✓
Dick Haines (R)	✓	
Joey Jayne (D)	✓	
Dave Kasten (R)		✓
Christine Kaufmann (D)	✓	
Monica Lindeen (D)	✓	
Matt McCann (D)	✓	
Jeff Pattison (R)		✓
Art Peterson (R)		✓
Joe Tropila (D)	✓	
John Witt (R)		✓
Steve Vick (R)		✓

House of Representatives

Roll Call Vote

APPROPRIATIONS COMMITTEE

DATE 4-2-01 Bill NO. S3489 NUMBER 17-0

MOTION: Rep Lewis Do Concur

Name	AYE	NO
Dave Lewis (R)	✓	
John Brueggeman (R)	✓	
Rosalie Buzzas (D)	✓	
Tim Callahan (D)	✓	
Edith Clark (R)	✓	
Bob Davies (R)	✓	
Stanley Fisher (R)	✓	
Dick Haines (R)	✓	
Joey Jayne (D)	✓	
Dave Kasten (R)	✓	
Christine Kaufmann (D)	✓	
Monica Lindeen (D)	✓	
Matt McCann (D)	✓	
Jeff Pattison (R)	✓	
Art Peterson (R)	✓	
Joe Tropila (D)	✓	
John Witt (R)	✓	
Steve Vick (R)	✓	

HOUSE OF REPRESENTATIVE
ROLL CALL

APPROPRIATIONS COMMITTEE

DATE 4-2-01

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
Steve Vick, Chair			
Dave Lewis, V. Chair			
Matt McCann, V. Chair			
John Brueggeman			
Roasalie Buzzas			
Tim Callahan			
Edith Clark			
Bob Davies			
Stanley Fisher			
Dick Haines			
Joey Jayne			
Dave Kasten			
Christine Kaufmann			
Monica Lindeen			
Jeff Pattison			
Art Peterson			
Joe Tropila			
John Witt			



HOUSE STANDING COMMITTEE REPORT

April 3, 2001

Page 1 of 1

Mr. Speaker:

We, your committee on Appropriations recommend that **Senate Bill 489** (third reading copy - blue) be concurred in as amended.

Signed: _____

Steve Vick
Representative Steve Vick, Chair

To be carried by Representative Jim Shockley

And, that such amendments read:

1. Page 17, line 4.

Following: "instruction."

Strike: "(1)"

2. Page 17, line 7 and line 8.

Strike: line 7 and line 8 in their entirety

3. Page 17, line 9 and line 10.

Strike: line 9 and line 10 in their entirety

- END -

Committee Vote:
Yes 17, No 0.

751220SC.hdc

*3.30
3.42*

2001 Montana Legislature

About Bill -- Links

SENATE BILL NO. 489

INTRODUCED BY L. GROSFIELD



AN ACT REVISING THE PENALTIES FOR FOURTH OR SUBSEQUENT OFFENSE DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS AND DRIVING WITH EXCESSIVE ALCOHOL CONCENTRATION; ALLOWING AS A PENALTY FOR A FOURTH OR SUBSEQUENT OFFENSE THAT A PERSON ENTER AND COMPLETE A RESIDENTIAL ALCOHOL DEPENDENCY TREATMENT PROGRAM OPERATED OR APPROVED BY THE DEPARTMENT OF CORRECTIONS; ALLOWING THE DEPARTMENT OF CORRECTIONS TO OPERATE A RESIDENTIAL ALCOHOL TREATMENT PROGRAM AT THE FORENSIC UNIT AT WARM SPRINGS; AMENDING SECTIONS 53-1-202, 61-8-731, AND 61-8-732, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the incidence of fourth or subsequent convictions for driving under the influence of alcohol has not abated despite the threat of imprisonment; and

WHEREAS, alcoholism may be treatable with the appropriate level of intensive therapeutic programming; and

WHEREAS, a program of intensive residential alcohol treatment may reduce recidivism by persons who drive under the influence of alcohol.

THEREFORE, the Legislature finds that it is in the interests of public health and safety to establish a residential alcohol treatment program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-1-202, MCA, is amended to read:

"53-1-202. (Temporary) Department of corrections. (1) Adult and youth correctional services are included in the department of corrections to carry out the purposes of the department.

(2) Adult corrections services consist of the following correctional facilities or programs:

(a) the prisons listed in 53-30-101;

(b) appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:

(i) in prerelease centers;

(ii) under intensive supervision;

(iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(iv) in other appropriate programs; and

(c) the boot camp authorized by 53-30-403.

(3) Youth correctional services consist of the following correctional facilities or programs to provide for custody, supervision, training, education, and rehabilitation of delinquent youth and youth in need of intervention pursuant to Title 52, chapter 5:

(a) Pine Hills youth correctional facility or other state youth correctional facility; and

(b) any other facility or program that provides custody and services for delinquent youth.

(4) A state institution or facility may not be moved, discontinued, or abandoned without the consent of the legislature.

53-1-202. (Effective on occurrence of contingency) Department of corrections. (1) Adult and youth correctional services are included in the department of corrections to carry out the purposes of the department.

(2) Adult corrections services consist of the following correctional facilities or programs:

(a) the prisons listed in 53-30-101;

(b) appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:

(i) in prerelease centers;

(ii) under intensive supervision;

(iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(iv) in other appropriate programs;

(c) the boot camp authorized by 53-30-403; and

(d) a residential alcohol treatment program located at the forensic unit at Warm Springs.

(3) Youth correctional services consist of the following correctional facilities or programs to provide for custody, supervision, training, education, and rehabilitation of delinquent youth and youth in need of intervention pursuant to Title 52, chapter 5:

- (a) Pine Hills youth correctional facility or other state youth correctional facility; and
- (b) any other facility or program that provides custody and services for delinquent youth.

(4) A state institution or correctional facility may not be moved, discontinued, or abandoned without the consent of the legislature."

Section 2. Section 61-8-731, MCA, is amended to read:

"61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- penalty for fourth or subsequent offense. (1) On the fourth or subsequent conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, the person is guilty of a felony and shall be punished by:

~~(a)(a) imprisonment sentencing the person to the department of corrections for placement in an appropriate correctional facility or program for a term of not less than 6 months or more than 13 months; for which the imposition or execution of the first 6 months may not be suspended, and during which the person is not eligible for parole;~~

~~—(b) probation for a term of not less than 1 year or more than 4 years; and for a term of 13 months. The court shall order that if the person successfully completes a residential alcohol treatment program operated or approved by the department of corrections, the remainder of the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may not be deferred or suspended, and the person is not eligible for parole.~~

~~—(b) sentencing the person to either the department of corrections or the Montana state prison or Montana women's prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the term imposed under subsection (1)(a); and~~

~~(c)(c) a fine in an amount of not less than \$1,000 or more than \$10,000.~~

~~(2) The court shall, subject to sentencing restrictions:~~

~~—(a) specify one of the following facilities as the initial place in which the term of imprisonment must be served:~~

~~—(i) a state prison;~~

~~—(ii) a regional correctional facility;~~

~~—(iii) a county jail;~~

~~—(iv) a boot camp, provided the prior approval of the department of corrections has been obtained; or~~

~~—(v) a prerelease center or, upon acceptance by the facility, a state-approved public or private treatment facility that provides the appropriate level of chemical dependency treatment, provided the prior approval of the department of corrections has been obtained; or~~

~~—(b) sentence the person to the department of corrections for placement in an appropriate correctional institution or program; and~~

~~—(c) order a person who is financially able to pay the costs of imprisonment, probation, and chemical dependency treatment under this section.~~

(2) The department of corrections may place an offender sentenced under subsection (1)(a) in a residential alcohol treatment program operated or approved by the department of corrections or in a state prison.

(3) The court shall, as a condition of probation, order:

(a) that the person abide by the standard conditions of probation promulgated by the department of corrections;

(b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section;

(c) that the person may not frequent an establishment where alcoholic beverages are served;

(d) that the person may not consume alcoholic beverages;

(e) that the person may not operate a motor vehicle unless authorized by the person's probation officer;

(f) that the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;

(g) that the person submit to random or routine drug and alcohol testing; and

(h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system.

(3)(4) The sentencing judge may impose upon the defendant any other reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited to:

(a) payment of a fine as provided in 46-18-231;

(b) payment of costs as provided in 46-18-232 and 46-18-233;

(c) payment of costs of court-appointed counsel as provided in 46-8-113;

(d) community service;

(e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the

protection of society; or

~~(f) treatment in a state-approved public or private treatment facility; or~~

~~(g)(f)~~ any combination of the restrictions or conditions listed in subsections (3)(a) through ~~(3)(f)~~ (3)(e).

~~(4)(a)~~(5) Following initial placement of a defendant in a ~~boot camp, prerelease center, or~~ treatment facility under subsection (2)~~(a)~~, the department of corrections may, at its discretion, place the offender in another facility or program.

~~(b) The department of corrections may order all or any portion of the term of probation to be served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation, apply to the probation.~~

~~(5) If a violation of the restrictions or conditions of the probation is established, the court may continue the period of probation or may require the defendant to serve the remainder of the probation sentence in one of the facilities set forth in subsection (2)(a) or (2)(b). The court may credit the remainder of the probation or the time to be served in a facility set forth in subsection (2)(a) or (2)(b) with all or part of the time already served on probation.~~

(6) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to persons sentenced under this section."

Section 3. Section 61-8-732, MCA, is amended to read:

"61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- assessment, education, and treatment required. (1) In addition to the punishments provided in 61-8-714, 61-8-722, and 61-8-731, regardless of disposition, a defendant convicted of a violation of 61-8-401 or 61-8-406 shall complete:

(a) a chemical dependency assessment;

(b) a chemical dependency education course; and

(c) on a second or subsequent conviction for a violation of 61-8-401 or 61-8-406, except a fourth or subsequent conviction for which the defendant completes a residential alcohol treatment program under 61-8-731(2), or as required by subsection (8) of this section, chemical dependency treatment.

(2) The sentencing judge may, in the judge's discretion, require the defendant to complete the chemical dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before sentencing, the judge shall order the chemical dependency assessment as part of the sentence.

(3) The chemical dependency assessment and the chemical dependency education course must be completed at a treatment program approved by the department of public health and human services and must be conducted by a certified chemical dependency counselor. The defendant may attend a treatment program of the defendant's choice as long as the treatment services are provided by a certified chemical

dependency counselor. The defendant shall pay the cost of the assessment, the education course, and chemical dependency treatment.

(4) The assessment must describe the defendant's level of addiction, if any, and contain a recommendation as to education, treatment, or both. A defendant who disagrees with the initial assessment may, at the defendant's cost, obtain a second assessment provided by a certified chemical dependency counselor or a program approved by the department of public health and human services.

(5) The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based upon the determination of one of the counselors.

(6) Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a chemical dependency education course or treatment program. If the defendant fails to attend the education course or treatment program, the counselor shall notify the court of the failure.

(7) A court or counselor may not require attendance at a self-help program other than at an "open meeting", as that term is defined by the self-help program. A defendant may voluntarily participate in self-help programs.

(8) Chemical dependency treatment must be ordered for a first-time offender convicted of a violation of 61-8-401 or 61-8-406 upon a finding of chemical dependency made by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services.

(9) (a) On a second or subsequent conviction, the treatment program provided for in subsection (5) must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program.

(b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the court shall revoke the suspended sentence, if any, impose any remaining portion of the suspended sentence, and may include additional monthly monitoring for up to an additional 6 months."

Section 4. Coordination instruction. If Senate Bill No. 207 is passed and approved and if it includes a section that removes the forensic unit at Warm Springs as one of the facilities or programs of the department of corrections, then [section 1] is void.

Section 5. Effective date. [This act] is effective July 1, 2001.

Section 6. Applicability. [This act] applies to persons sentenced under 61-8-731 for offenses

committed on or after [the effective date of this act].

- END -

Latest Version of SB 489 (*SB0489.ENR*)
Processed for the Web on April 12, 2001 (1:50PM)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.
See the [status of this bill](#) for the bill's primary sponsor.

[Status of this Bill](#) | [2001 Legislature](#) | [Leg. Branch Home](#)
[This bill in WP 5.1](#) | [All versions of all bills in WP 5.1](#)
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Prepared by Montana Legislative Services

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